IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 622 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

R.U.SHAH

Versus

CHANDUBHAI JADAVBHAI

Appearance:

MR KI SHAH for Petitioner

MR DJ BHATT for MR RR MARSHALL for Respondent No. 1

MR MA PATEL, APP for Respondent No. 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 04/08/2000

ORAL JUDGEMENT

1. This acquittal appeal arises from impugned judgment and order dated 13/11/1987 rendered by the Ld. Judicial Magistrate First Class (Municipal), Surat in

P.F.A. Case No. 35 of 1983. The first 2 respondents were charged with the offence punishable u/S. 7 read with section 16 of the Prevention of Food Adulteration Act (for short 'PFA Act').

2. The facts of the prosecution case indicate that present appellant being the complainant had the occasion at around 6.10 O'clock in the morning of 12/5/1983 to stop accused no. 2 who was going on accused no.1's bicycle with two tin cans and one aluminium utensil containing 61 litres of cow milk for the sale thereof. The milk was to be supplied to cooperative dairy of Choryasi Taluka Milk Sale Cooperative Society. The complainant purchased milk for analysis from the aluminium utensil after stirring the same with one measure. After following the procedure for preparing samples, he had sent one of the samples in a sealed bottle for analysis by the Public Analyst. Upon receipt of the report from Public Analyst stating that the sample milk did not conform to the standards, complaint in question was filed. The Ld. Magistrate, while appreciating the evidence adduced before him, more particularly the evidence of Public Analyst, who was examined at exh. 59, came to the conclusion that the prosecution failed to establish beyond reasonable doubt the fact that the sample milk did not conform to the standards prescribed under the PFA Rules.

3. Upon overall consideration of the evidence adduced before him, Ld. Magistrate acquitted the accused persons on his finding that the prosecution failed to establish its case.

4. I have heard the learned advocate appearing for the appellant - complainant, learned advocate appearing for the first 2 respondents - accused persons and the Ld. APP for the State. I have gone through the evidence adduced before the Ld. Magistrate, more particularly evidence of the Public Analyst appearing at exh. 59. On going through the discussion of the evidence and comparing the same with the evidence read before this Court, it might be noticed that the Ld. Magistrate cannot be said to have committed error in the statement and appreciation of the evidence, more particularly exh. 59. Number of circumstances have been shown from the cross-examination of the Public Analyst for pointing out how there could be negligible difference in the particular standard having not been complied with. It appears that as per the report of the Public Analyst (exh. 22) as against the required standard of fat (3.5%) the fat in the sample milk was found to be 4.9%. Once

again as against required standard of solid non-fat of 8.5%, the sample milk showed solid non-fat 8.0%. It would thus appear that solid non-fat was less by 0.5% than the prescribed standard; whereas fat was quite more than the prescribed standard. It would, therefore, clearly appear that the negligible difference in the find of solid non-fat was possibly attributable to one or more of the circumstances pointed out in the cross-examination of the Public Analyst exh. 59. What is important is that the Ld. Magistrate has come to the conclusion that upon appreciation of the evidence of witnesses, more particularly exh. 59, prosecution could not establish the adulteration as reflected by report of the Public Analyst exh. 22 beyond reasonable doubt. Such finding of fact rendered by the Ld. Magistrate cannot be faulted particularly when he had occasion to hear the witnesses giving evidence before him. Bearing in mind the facts and circumstances of the case, more particularly as flowing from the evidence of the Public Analyst, this appeal is required to be dismissed. Order accordingly.

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PVR.